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In the Supreme Court of the United States

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WILLARD IRWIN SINGER AND MARTIN H. SINGER,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

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OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 146) is reported at 141 F. 2d 262. The opinion of the district court (R. 4) denying petitioners' motions in arrest of judgment and for a new trial is reported at 49 F. Supp. 912.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 29, 1943 (R. 147), and a petition for rehearing (R. 148–151) was denied January 12, 1944 (R. 152). The petition for a writ of certiorari was filed February 16, 1944,

and denied March 27, 1944. On May 22, 1944, this Court vacated its order of March 27th and granted the petition as to the second question presented (Pet. 2–3), whether the conspiracy provision of Section 11 of the Selective Training and Service Act extends to a conspiracy to accomplish evasion of military service or is limited to conspiracies knowingly to hinder or interfere by force or violence with the administration of the Act. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether a conspiracy to accomplish the evasion of military service by one subject to the Selective Training and Service Act is punishable under Section 11 of the Act, with the consequence that an indictment for the offense need not allege an overt act, since Section 11 requires none.

STATUTES INVOLVED

Section 11 of the Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, 894–895, 50 U. S. C. App., Sec. 311, provides in pertinent part as follows:

> Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given there-

under, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdic-

> tion thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine imprisonment, * * *.

Section 37 of the Criminal Code (18 U. S. C. 88) provides as follows:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both.

Other statutes, which will be referred to in the Argument, are set forth in the Appendix, *infra*.

STATEMENT

Petitioners and one Walter Weel were indicted in the United States District Court for the Western District of Pennsylvania on November 12, 1942, in one count charging a conspiracy in violation of Section 11 of the Selective Training and Service Act of 1940, to accomplish the evasion of service in the armed forces by petitioner Willard Singer. The indictment charged that the defendants planned that Willard Singer, who had registered under the Selective Training and Service Act, would, in his questionnaire and at a hearing before his local draft board, make false statements in respect to his own physical condition and the financial responsibility, ability to earn a living,

and physical condition of his father, Martin Singer; that Martin Singer would submit false affidavits as to his physical condition, financial responsibility, employment, and ability to earn a living, in order to aid Willard Singer to evade service in the armed forces; and that Walter Weel would submit a false affidavit as an employer, in support of a claim for the occupational deferment of Willard Singer.[1] A demurrer to the indictment on the ground that it was insufficient because it failed to allege an overt act was overruled (R. 8) and petitioners were tried before a jury and found guilty on December 9, 1942 (R. 2). Motions for a new trial and in arrest of judgment were overruled (R. 2, 4–7). Petitioner Willard Singer was sentenced to imprisonment for one year and one day (R. 2). Weel received a similar sentence (R. 2). Imposition of sentence was suspended as to petitioner Martin Singer and he was placed on probation for two years (R. 2). On appeal, the judgments were affirmed (R. 147).

SUMMARY OF ARGUMENT

The question is whether the indictment is sufficient, in light of the fact that it does not charge the commission of an overt act. It is sufficient if Section 11 of the Selective Training and Service Act extends to all conspiracies to commit offenses

[1] The indictment is not included in the printed record but is on file in this Court.

against the Act, since that Section does not require an overt act for completion of the offense of conspiracy; but the indictment is insufficient if the conspiracy clause of Section 11 is limited to conspiracies to interfere with the administration of the Act by force or violence, since petitioners and their associate are not charged with having contemplated force or violence and Section 37 of the Criminal Code, under which it would have been necessary to prosecute them if Section 11 of the Selective Training and Service Act does not apply, requires the commission of an overt act.

Section 11 presents a question of interpretation because the conspiracy clause, following the conjunction "or", does not include an expressed subject. The antecedent of "so" is not specified; and the implied subject, from the wording of the Section and the position of the conspiracy clause in it, might be either that of the immediately preceding clause or those of all of the antecedent clauses. The clause, however, is separated by a comma from the one before and thus becomes the last of a series. Principles of statutory construction point to the correct interpretation.

Application of the principle that "when several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all", and of the rule that words which were omitted from a

statute in derogation of its meaning may be regarded as present by a court which construes the statute, leads to the conclusion that the conspiracy clause of Section 11 relates back to all of the preceding clauses which define substantive offenses. Accordingly, that clause is applicable to the offense committed by petitioners and their associate. Other instances of statutory interpretation in which the same principles have been applied, notably *Porto Rico Ry. Co.* v. *Mor,* 253 U. S. 345, and *Hillsboro Coal Co.* v. *Knotts,* 273 Fed. 221 (S. D. Ill.), exemplify the method of interpretation which should be applied here. Both the Circuit Court of Appeals for the Second Circuit in *United States* v. *O'Connell,* 126 F. 2d 807, certiorari denied *sub nom. Houlihan* v. *United States,* 316 U. S. 700, and the court below in the present case have adopted this reasoning.

The legislative purpose which should be given effect in interpreting the conspiracy clause of Section 11 of the Selective Training and Service Act clearly was (1) to increase the maximum punishment for all conspiracies to violate the Act, as an accompaniment of increased punishment for the substantive offenses defined, above that prescribed in the Selective Draft Act of 1917, and (2) to eliminate the requirement of an overt act. This is demonstrated by the facts (a) that a contrary interpretation would leave the conspiracy clause substantially without legisla-

tive effect, (b) that the Selective Training and Service Act was enacted as part of a legislative program for dealing with the national emergency of 1940, which embraced several enactments increasing the punishments for related offenses, (c) that the punishments prescribed in recent legislation defining other specific types of conspiracy are equally as severe as those provided in Section 11 and are equal to those for the corresponding substantive offenses, and (d) the omission of the requirement of an overt act for completion of the offense of conspiracy is usual in modern Congressional legislation.

It would run counter to all of the foregoing considerations to limit the conspiracy clause of Section 11 of the Selective Training and Service Act to conspiracies to obstruct the administration of the act by force or violence. Non-violent conspiracies to commit other substantive offenses against the Act would be punishable only under the comparatively mild provision of Section 37 of the Criminal Code, contrary to the clearly-manifested purpose of Congress. The Selective Training and Service Act would be construed "in a spirit of mutilating narrowness" instead of in accordance with the legislative purpose. The latter represents the method of this Court in giving effect to Congressional enactments.

ARGUMENT

THE INDICTMENT IS SUFFICIENT SINCE SECTION 11 OF THE SELECTIVE TRAINING AND SERVICE ACT OF 1940 EXTENDS TO ALL CONSPIRACIES TO COMMIT OFFENSES AGAINST THE ACT

A. *The structure, punctuation, and wording of section 11 point to the conclusion that the conspiracy clause relates to all of the offenses previously specified in the section*

Section 11 provides that "any person" who commits any of six enumerated offenses against the Act and the regulations issued pursuant to it, none of which involves the use of force or violence, "or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of the Act or the rules or regulations made pursuant thereto, or conspire to do so," shall be punished in the manner prescribed.

A question of interpretation is presented by the quoted provision of the Section because the clause "conspire to do so", following the conjunction "or", may refer to all of the offenses previously defined in the Section or may refer only to the immediately preceding offense, defined as "knowingly [to] interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto". If the clause included, as do all of the previous clauses of the Section, a subject, "any person who" or "any person or persons who", such

as must in any event be implied, it would be clear that the conspiracy clause, as the last independent clause in a series, extended to conspiracies to commit any of the offenses previously enumerated. Even as the matter stands, however, the clause is separated by a comma from the one before and is one of the series; and the omission of an expressed subject renders only colorable the claim that it relates simply to the last preceding clause. Principles of statutory construction point to the correct interpretation.

It is an established rule that "when several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *Porto Rico Ry. Co.* v. *Mor,* 253 U. S. 345, 348; *United States* v. *Standard Brewery,* 251 U. S. 210, 218; *Hillsboro Coal Co.* v. *Knotts,* 273 Fed. 221 (S. D. Ill.); Lord Bramwell in *Great Western Ry. Co.* v. *Swindon, etc., Ry. Co.,* L. R. 9 App. Cas. 787; *Service Investment Co.* v. *Dorst,* 232 Wis. 574, 288 N. W. 169 (1939). It is also settled that words which were omitted from a statute by the legislature may be regarded as present by a court which has the statute to construe, in order to avoid defeating the legislative purpose. *Kennedy* v. *Gibson,* 8 Wall. 498, 506–507; *Gustavel* v. *State,* 153 Ind. 613, 54 N. E. 123 (1899); *Norville* v. *State Tax Commission,* 98 Utah 170, 97 P. 2d 937, 126 A. L. R. 1318 (1940);

Commonwealth v. *Florence,* 192 Ky. 236, 232 S. W. 369 (1921). This is so even when the result is to sustain a criminal conviction which otherwise could not stand. Thus the court stated in *Gustavel* v. *State, supra,* at p. 617, in justification of regarding the omitted adjective "other" as included in a statutory provision which would otherwise have been nullified, that "the intent of the act is evident and it should be carried into effect. Criminal statutes should not be construed so strictly as to defeat their obvious interpretations. The principle of strict construction does not allow a court to make that an offense which is not such by legislative enactment, but this does not exclude the application of common sense to the terms made use of in an act, in order to avoid an absurdity which the legislature ought not to be presumed to have intended." See also *Commonwealth* v. *Florence, supra.*

This Court has said, moreover, that even when the literal wording of a statutory provision does "not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole'", its interpretation should follow "that purpose, rather than the literal words." *United States* v. *American Trucking Assn's,* 310 U. S. 534, 543. The same principle has been followed in criminal cases, with the result that convictions have been sustained even though stricter interpretations, leading to reversals, would have been in accord with

the statutory wording. *United States* v. *Giles*, 300 U. S. 41, 49; cf. *Ash Sheep Co.* v. *United States*, 252 U. S. 159, 170.

Under the foregoing principles, especially in view of the comma which separates the clause "or conspire to do so" from the clause immediately preceding it, the proper conclusion is that the conspiracy provision of Section 11 relates back to all of the offenses previously enumerated. The omitted subject, which would have made clear the relationship of the clause to the remainder of the series and which must be inferred in any event, may be supplied; and the predicate "conspire to do so" may be given its natural significance of reference back to all of the offenses previously enumerated.

The structure of the Section as a whole reinforces this view. The substantive offenses denounced are set forth first and are then followed by the conspiracy clause. Each of the offenses has been placed on the same footing and each is punishable in the same manner. The conspiracy clause appears at the end of a series of enumerated offenses and is separated from the preceding clause by a comma, thus emphasizing its relationship to all the others. No reason appears, of wording or policy, for denying to it the meaning which the legislature seems clearly to have intended. The result is to create a rational scheme of offenses and punishments, with the same maxi-

mum punishment throughout, treating all types of conspiracies equally, just as the substantive offenses are treated.

A similar method of interpretation was applied to a criminal statute in *Hillsboro Coal Co.* v. *Knotts*, 273 Fed. 221 (S. D. Ill.), in which a suit was brought to enjoin the prosecution of the plaintiffs upon a charge of violating Section 9 of the Lever Act of August 10, 1917, c. 53, 40 Stat. 276, which made it an offense for any person to conspire or combine with another "(a) to limit the facilities for transporting, producing * * * or dealing in any necessaries; (b) to restrict the supply of any necessaries; (c) to restrict the distribution of any necessaries; (d) to prevent, limit, or lessen the manufacture or production of any necessaries in order to enhance the price thereof." It was contended that the qualifying phrase "in order to enhance the price thereof" applied only to subsection (d) in which it appeared, and that the preceding subsections were therefore so broad in scope and so vague in content as to violate the requirements of due process of law. The court, however, held that the phrase in question, although contained in the concluding subsection, was intended to apply to all of the preceding subsections and that this became clear if a comma were inserted before the phrase as the legislature must have intended. In the instant case the statute as enacted contains the comma which sets off the

clause "or conspire to do so" from the remainder of the provision within which it appears.

In *Porto Rico Ry. Co.* v. *Mor*, 253 U. S. 345 *supra*, the following provision of the Jones Act of March 2, 1917, c. 145, 39 Stat. 951, providing a civil government for Porto Rico, was involved:

> Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds * * * the sum or value of $3,000 * * *.

The question was whether the qualifying phrase "not domiciled in Porto Rico" modified only the phrase "citizens of a State, Territory, or District of the United States," to which it was directly attached in the sentence, or whether it also modified the preceding words "citizens or subjects of a foreign State or States." This Court held that the latter was the proper interpretation, giving effect to the legislative purpose, and that, consequently, citizens or subjects of a foreign state or states who were domiciled in Porto Rico could not bring suit in the District Court by virtue of the quoted provision. In that case again, in contrast to the case at bar, the judicial interpretation of the statutory provision was not aided by the presence

of a comma before the modifying words which were related back. The presence of the comma before the clause involved in the instant case points even more definitely to a similar conclusion. See *Service Investment Co.* v. *Dorst, supra; Rust* v. *Griggs,* 172 Tenn. 565, 573, 113 S. W. 2d 733 (1938).

The use of the plural verb "conspire" in the clause in question does not militate against this result. If interpreted to cover conspiracies to commit any of the offenses previously enumerated in the Section, the clause refers both to the offenses which "any person" is to be punished for committing and to the offense of interfering by force or violence with the administration of the Act, which the Section makes punishable when committed by "any person or persons." Hence the subject of the verb "conspire" is both singular and plural, whether or not the clause relates back to the beginning of the Section, and the use of the plural verb is natural and correct. It includes the singular. *First National Bank* v. *Missouri,* 263 U. S. 640, 657; R. S. Sec. 1, 1 U. S. C. Sec. 1. Conspiracy, moreover, is inherently a crime which requires more than one participant, and the choice of the plural verb was inevitable for this reason as well.

The foregoing reasoning with respect to the meaning of Section 11 has been followed by the Circuit Court of Appeals for the Second Circuit,

the only other court which has dealt with the problem, and has been followed, in turn, by both of the lower courts in the present case (R. 4, 146). In *United States* v. *O'Connell*, 126 F. 2d 807, certiorari denied *sub nom. Houlihan* v. *United States*, 316 U. S. 700, the Circuit Court of Appeals for the Second Circuit noted that (p. 810):

> * * * the words "or conspire to do" would not have been preceded by a comma (as they are) if they had been intended to relate only to hindering the administration of the Act "by force or violence" and not to the other enumerated offenses. * * *

and, further, that—

> Interpreting the section as a whole, the subjects of the verb "conspire" are various, some in the singular and some in the plural, so that the word "conspire" was naturally enough placed in the plural.

See also *United States* v. *Keegan et al*, 141 F. 2d 248 (C. C. A. 2; No. 39, this Term).

B. *The interpretation of section 11 which follows from its structure, punctuation, and wording is reinforced by its scope and purpose as reflected in its legislative history and its relationship to other statutes*

Although the legislative history of the Selective Training and Service Act of 1940 contains no specific statement with regard to the proper interpre-

tation of Section 11,[2] it was stated that the section was intended in a general way to reproduce in simpler form the penal provisions which prevailed under the legislation of World War I. Senator Sheppard, Chairman of the Senate Committee on Military Affairs, in explaining the bill stated on the floor of the Senate (86 Cong. Rec. 10095) that "Section 9 [Section 11 as enacted] contains the penalty provisions of the bill, which are substantially the same as the World War [Selective Draft] act [40 Stat. 76, 50 U. S. C., App., Sec. 201 *et seq.*]. Experience with the World War provisions shows that they worked satisfactorily in providing the necessary protection."

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[2] The bills which eventually became the Selective Training and Service Act of 1940 were introduced in the House (H. R. 10132) by Representative Wadsworth on June 21, 1940 (86 Cong. Rec. 8908) and in the Senate (S. 4164) by Senator Burke on June 20, 1940 (86 Cong. Rec. 8680). Immediately upon their introduction they were referred to the respective Committees on Military Affairs. As originally framed, the penal provisions in each bill were contained in a single section substantially the same as Section 11 as it now stands. They then included in their present position, in Section 10 of the House Bill and Section 9 of the Senate Bill, the words "or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so." Extensive hearings were conducted by the committees, but there is little discussion of the penal aspects of the bills. Hearings, House Committee on Military Affairs, H. R. 10132, 76th Cong., 3d Sess., p. 3; Hearings, Senate Committee on Military Affairs, S. 4164, 76th Cong., 3d Sess., pp. 3–4. An abstract of the leg-

The penal provisions of the Selective Draft Act of 1917 did not, however, contain a conspiracy provision and the punishments which it prescribed for substantive offenses were much milder than those proposed in the bill. The 1917 Act punished failure to register (Section 5); failure to file a questionnaire, the making of false exemption claims, failure to report for examination, and otherwise evading the requirements of the Act or aiding another to do so (Section 6); and other offenses not here relevant (Sections 12 and 13), by imprisonment of not more than one year. Sena-

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islative history of the Act is set forth in *Selective Service in Peacetime*, First Report of the Director of Selective Service, 1940–1941, Appendix 1, pp. 319–322. The committee reports recommending the enactment of the Selective Service Act are not illuminating, the House Report merely stating that "Section 10 [Section 11 as enacted] is the general penalty section. The violations specified are punishable by imprisonment for not more than 5 years or by a fine of not more than $10,000, or by both such fine and imprisonment" H. Rep. 2903, 76th Cong., 3d Sess., p. 7. The bills were reported out of committee and brought on to the floor of the House on August 29, 1940 (86 Cong. Rec. 11266) and on to the floor of the Senate on August 5, 1940 (86 Cong. Rec. 9824). Lengthy debates followed, culminating in the passage of the law on September 16, 1940 (86 Cong. Rec. 10077–12290). The "force or violence" provision of Section 11 as enacted departed from the original bills through the insertion of the word "knowingly" before the words "hinder or interfere" and the expansion of the original word "regulations" to "rules or regulations." These changes were made in committee (S. Rep. 2002, 76th Cong., 3d Sess., pp. 4–5).

tor Shephard's statement, consequently, must be taken to mean that Section 9 of the bill embraced the offenses covered in the 1917 Act and also the conspiracy provisions of other statutes which were employed in enforcing that Act, without reference to the punishments prescribed.

Conspiracy prosecutions were liberally employed during World War I. Conspiracies to commit the non-violent offenses defined in the Selective Draft Act were prosecuted under Section 37 of the Criminal Code, *supra*, p. 4. For examples, see *O'Connell* v. *United States*, 253 U. S. 142, 148; *Anderson* v. *United States*, 269 Fed. 65 (C. C. A. 9), certiorari denied, 255 U. S. 576; *United States* v. *McHugh*, 253 Fed. 224 (W. D. Wash.). Conspiracies contemplating the use of force were prosecuted under Section 6 of the Criminal Code, *infra*, p. 37. *Reeder* v. *United States*, 262 Fed. 36 (C. C. A. 8), certiorari denied, 252 U. S. 581; *Enfield* v. *United States*, 261 Fed. 141 (C. C. A. 8).[3] Some conspir-

[3] Compare *Haywood* v. *United States*, 268 Fed. 795 (C. C. A. 7), certiorari denied, 256 U. S. 689, holding that a conspiracy to obstruct by force the operation of the 1917 Act could not be prosecuted under Section 6, but must be prosecuted under Section 4 of the Espionage Act on the theory that in time of war the Espionage Act superseded Section 6. *Contra* as to Section 37 of the Criminal Code: *Snitkin* v. *United States*, 265 Fed. 489 (C. C. A. 7). *Enfield* v. *United States*, which is *contra* as to Section 6 of the Criminal Code, conceded that the language of Section 4 of the Espionage Act precluded prosecution under Section

acies, constituting conspiracies to violate Section 3 of the Espionage Act by obstructing "the recruiting or enlistment service of the United States, to the injury of the service of the United States", were prosecuted under Section 4 of that Act, 40 Stat. 219, 50 U. S. C. sec. 34, *infra*, pp. 36–37. See *O'Connell* v. *United States, supra; Pierce* v. *United States*, 252 U. S. 239; *Frohwerk* v. *United States*, 249 U. S. 204; *Reeder* v. *United States, supra.* That section, however, is applicable only in time of war because the substantive offense, as defined in Section 3, can be committed only during war.

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37 of the Criminal Code of any conspiracies which were subject to prosecution under Section 4 of the Espionage Act. However, it was usual to frame indictments in several counts under the various statutes, with factual variations. *O'Connell* v. *United States*, 253 U. S. 142, *supra.*

It is unnecessary to decide in the present case whether conspiracies to violate the Selective Training and Service Act of 1940 may properly be prosecuted under Section 37 of the Criminal Code, as was assumed in *United States* v. *Offutt*, 127 F. (2d) 336 (App. D. C.) and *United States* v. *Winter*, 38 F. Supp. 627 (E. D. Pa.). If only one of the existing conspiracy statutes can be invoked, clearly it is Section 11 of the Selective Training and Service Act of 1940, under which petitioner was convicted, since it is the latest enactment in point of time and is specifically applicable, provided, of course, that this section extends, as here contended, to conspiracies not contemplating force or violence. *Callahan* v. *United States*, 285 U. S. 515, 517–518; *Farnsworth* v. *Zerbst*, 97 F. 2d 255 (C. C. A. 5), rehearing denied, 98 F. 2d 541.

Section 37 of the Criminal Code provides punishment of not more than two years' imprisonment or a fine of $10,000 or both; Section 6 of the Criminal Code prescribes a maximum penalty of six years' imprisonment or a fine of $5,000 or both; and Section 4 of the Espionage Act, which is applicable only in time of war, incorporates the provisions of Section 3 for maximum sentences of 20 years' imprisonment. None of this legislation had been repealed at the time the Selective Training and Service Act of 1940 was under consideration. The purpose of including a conspiracy clause in Section 11, therefore, must have been to furnish a single basis for prosecuting conspiracies to violate the Act, with a maximum punishment deemed appropriate, rather than to deal particularly with conspiracies to interfere with the administration of the Act by force or violence.

That it was the purpose of Congress to include in Section 11 of the Selective Training and Service Act all conspiracies to violate the Act, whether or not force or violence is contemplated, is indicated by the following considerations: (a) the contrary interpretation leaves the conspiracy clause substantially without legislative effect; (b) the inclusion of all conspiracies to violate the Act, by rendering applicable the increased maximum punishment of five years to those conspiracies in which force or violence is not contemplated, accords with Congressional policy during the national emergency; (c) this increased max-

imum punishment conforms to the pattern of punishments for other non-violent conspiracies denounced in recent legislation, both as respects the amount of possible punishment and as regards the equality of such punishment with that which is prescribed for corresponding substantive offenses; and (d) the omission of an overt act as an ingredient of the offense of conspiracy likewise accords with modern Congressional policy.

(A) As regards the first consideration, it is evident that the conspiracy clause of Section 11, if that clause were deemed to apply only to conspiracies to obstruct the Act by force or violence, would either have no effect whatever upon the pre-existing law or—upon the doubtful assumption that Section 11 of the Selective Service Act superseded Section 6 of the Criminal Code with respect to the offense specified—would operate solely to decrease the maximum imprisonment for the offense from the six years prescribed in the latter section (*infra*, p. 37) to five years. Section 6 of the Criminal Code, like Section 11 of the Selective Training and Service Act, contains no requirement of an overt act; and accordingly the latter section works no change in this respect as applied to conspiracies to use force.

As will be shown, a decrease in the punishment for an offense connected with the national emergency would have been contrary to the policy of Congress as evidenced in other statutes enacted

during the same period. An interpretation which works such a result would be inconsistent with the probable legislative intent. In any event, both the insignificance of this change and the total absence of legislative effect if Section 6 of the Criminal Code be deemed not to have been superseded, constitute a degree of futility not lightly to be imputed to a significant clause in emergency legislation of the highest importance.

By contrast, the interpretation of the conspiracy clause which causes it to include all conspiracies to violate the Act, recognizes as resultant changes in the law, (a) an increase in the maximum punishment for conspiracies not contemplating force or violence from two years' imprisonment or a $10,000 fine or both, as specified in Section 37 of the Criminal Code, to 5 years' imprisonment or a $10,000 fine or both, and (b) abolition of the requirement that an overt act be established to complete the offense. Both changes, as will be shown, are in accord with Congressional policy at the time of enactment of the Selective Training and Service Act; and they are substantial and significant. The purpose of Congress to accomplish them seems clear, especially since nowhere in the proceedings leading to the enactment of the Selective Training and Service Act is there any indication of especial concern over possible interference with administration by force or violence. In addition, the conspiracy clause, as

thus construed, carries out fully the purpose stated by Senator Sheppard of bringing together the penal provisions applicable to selective service violations. Given the more narrow construction, the section leaves necessary continued resort to Section 37 of the Criminal Code in the prosecution of non-violent conspiracies.

(B) Quite evidently, in prescribing the punishments specified in Section 11 of the Selective Training and Service Act of 1940, Congress was giving effect to a policy of increasing these punishments beyond those which, except as the Espionage Act might be invoked, were effective with respect to offenses against the administration of the Draft Act during World War I. This policy was fitting, since at the time of the passage of the Selective Service Act on September 16, 1940, the country was not at war and the pertinent provisions of the Espionage Act were not operative. The comparatively mild provisions of Section 37 of the Criminal Code consequently supplied the only existing sanctions that might have been invoked against non-violent conspiracies to interfere with the administration of the Act. The relevant Espionage Act provisions remained inoperative during the limited national emergency declared by the President on September 8, 1939 (Proc. No. 2352) and the unlimited emergency declared on May 27, 1941 (Proc. No. 2487).

Both the substance and the express words of the Selective Training and Service Act demonstrate that it was formulated to meet the situation created by military peril in the absence of formally declared war; and this is a fact of history well known to the Court. In the first section of the Act Congress declared that "it is imperative to increase and train the personnel of the armed forces of the United States." The increased punishments prescribed in Section 11 for specific offenses, as compared with those prevailing during World War I, respond to the requirements of the emergency thus alluded to, as envisaged by Congress. A similar increase in the maximum punishment for conspiracies to commit non-violent offenses against the Act, as compared with those prescribed in Section 37 of the Criminal Code, was equally called for. Section 11 was designed to accomplish both purposes and should not now be partially defeated by a restrictive interpretation of its conspiracy clause for which there is no necessity because of wording or punctuation. On the contrary, the canon of interpretation which requires that ambiguities in statutes be so resolved as to give effect to the legislative purpose is fully applicable. *United States* v. *American Trucking Ass'ns,* 310 U. S. 534, 542–544; *Fleischmann Co.* v. *United States,* 270 U. S. 349, 361; *Ozawa* v. *United States,* 260 U. S. 178, 194. The Selective Training and Service Act is clearly a type of

legislation which "must not be read in a spirit of mutilating narrowness". *United States* v. *Hutcheson,* 312 U. S. 219, 235.

The true legislative purpose with respect to the punishments prescribed in Section 11 of the Act emerges still more clearly when these are viewed in the setting of other legislation, punishing crimes related to the national defense, which was enacted at the same session of Congress. First in point of time was the Act of March 28, 1940, c. 72, 54 Stat. 79, amending the Espionage Act of 1917 by systematically increasing the maximum punishment for those offenses, defined in the original Act, which may be committed in time of peace. Previous maximum-sentence provisions which authorized two years' imprisonment were amended to authorize five- or ten-year sentences; previous five-year provisions were raised to ten years; and a ten-year maximum for interference with exportations through the use of fire or explosives was increased to twenty years. Related in purpose to these amendments to the Espionage Act were those of November 30, 1940, c. 926, 54 Stat. 1220, to the Anti-Sabotage Act of April 20, 1918, c. 59, 40 Stat. 533, whereby destruction and attempts in peacetime to destroy national defense material, premises, or utilities were made punishable by fines of not more than $10,000 or imprisonment for not more than ten years or both.

Title I of the Alien Registration Act, enacted June 28, 1940, c. 439, 54 Stat. 670, dealt with acts designed to impair or influence the loyalty, morale, or discipline of the armed forces of the United States by certain specified acts; with certain forms of advocacy of the overthrow of the Government of the United States by force or violence; and with attempts and conspiracies to commit any of the prohibited acts, none of which involves force or violence. Conspiracies to commit any of these offenses were made punishable to the same degree as the substantive offenses defined, by imprisonment for not more than ten years or fines of not more than $10,000 or both. 54 Stat. 671, 18 U. S. C. Sec. 13. Finally, the Act requiring certain foreign-controlled and civilian military organizations to register with the Attorney General, enacted October 17, 1940, c. 897, 54 Stat. 1201, carried a penalty section which prescribed the same maximum punishments as Section 11 of the Selective Training and Service Act, except that the possible fine for false statements was limited to $2,000. 54 Stat. 1204, 18 U. S. C. Sec. 17.

Title I of the Alien Registration Act is most closely related to the conspiracy provision of the Selective Training and Service Act, in that it seeks to safeguard the armed forces themselves against subversive activity; but the entire series of enactments is clearly designed to strengthen

the criminal laws in their application to espionage, sabotage, and subversive activity affecting the defense effort during the emergency that was to ripen into war. Penal provisions were made uniformly more stringent than before; offenses previously recognized only in time of war were extended; and new safeguards were erected against the infiltration of hostile activity from abroad. It is inconceivable in the light of this program of strengthening the criminal laws as part of the legislative program dealing with defense, which called the Selective Training and Service Act into being, that Congress should have enacted a conspiracy clause in this Act with a weakening effect, if any at all, upon the preexisting law. The punishment for nonviolent conspiracies to violate the Act (under Section 37 of the Criminal Code) would under that interpretation be left markedly out of line with the punishment for other offenses of like nature, including the other punishments prescribed in the Act itself.

The resort to other, related legislation for light upon the proper interpretation of a statutory provision is, of course, not new. Aside from the familiar principle that all acts bearing upon a given subject should be construed together (*Helvering* v. *Morgan's, Inc.*, 293 U. S. 121, 128; *United States* v. *Babbit*, 66 U. S. 55, 60), the discovery of legislative policy by reference to

successive statutes which reveal it, is recognized in this Court as a realistic and valuable aid to statutory interpretation. *United States* v. *American Trucking Ass'ns, supra,* pp. 544–545; *Federal Housing Administration* v. *Burr,* 309 U. S. 242, 245; *Keifer & Keifer* v. *Reconstruction Finance Corp.,* 306 U. S. 381, 389–392; *United States* v. *Sweet,* 245 U. S. 563, 572.

(C) It cannot be said, in the light of other conspiracy statutes enacted by Congress in modern times, that the provision for a maximum punishment of five years' imprisonment or a $10,000 fine or both, contained in Section 11 of the Selective Training and Service Act, is unusually severe in relation to conspiracies, such as that of petitioner and his associates in this case, which are not subversive or seditious but simply criminal in character and do not contemplate the use of force or violence. Eight special conspiracy statutes dealing with offenses of this nature have been found in the United States Code. Of the conspiracies denounced, only those in restraint of interstate commerce (Act of July 2, 1890, c. 647, §§1–3, 26 Stat. 209; 15 U. S. C. §§1–3) and of import trade (Act of Aug. 27, 1894, c. 349, Sec. 73, 28 Stat. 570, as amended, 15 U. S. C. Sec. 8), together with conspiracies to make false statements concerning veterans' benefits (Act of Mar. 20, 1933, c. 3, Sec. 15, 48 Stat. 11, 38 U. S. C. Sec. 715), are punishable less severely.

Conspiracy to defraud the Tennesse Valley Authority (Act of May 18, 1933, c. 32, Sec. 21, 48 Stat. 68, 16 U. S. C. Sec. 831t (c)) is punishable by 5 years' imprisonment or a $5,000 fine or both; conspiracy to commit any of several offenses against the Farm Credit Administration (Act of June 16, 1933, c. 98, Sec. 64, 48 Stat. 269, as amended, 12 U. S. C. Sec. 1138d (f)) is punishable either by five years' imprisonment or a $10,000 fine or both, or in some instances a maximum of two years' imprisonment or a fine or both; and, since 1918, conspiracy to defraud the United States by means of a false claim (Act of Mar. 4, 1909, c. 321, Sec. 35 (R. S. Sec. 5438), as amended Oct. 23, 1918, c. 194, 40 Stat. 1015, 18 U. S. C. Sec. 83) has carried a possible punishment of ten years' imprisonment or a fine of $10,000 or both. Conspiracy to violate the National Stolen Property Act (Act of Aug. 3, 1939, c. 413, Sec. 5, 53 Stat. 1179, 18 U. S. C. Sec. 418a) may be similarly punished. A conspiracy to injure another in the enjoyment of his civil rights (Act of Mar. 4, 1909, c. 321, Sec. 19, 35 Stat. 1092, 18 U. S. C. Sec. 51) carries the same punishment, except that the fine is limited to $5,000.

It is clear from the foregoing summary that punishments for non-violent conspiracy, prescribed during the present century, have been at least as severe as those provided in Section 11 of the Selective Training and Service Act, with two

minor exceptions.[4] In this connection again, the legislative policy emerges from statutes *in pari materia,* and an interpretation of Section 11 in consonance with this policy seems clearly to be called for. To remit conspiracies to violate the Selective Training and Service Act to the penalty provision of Section 37 of the Criminal Code would be to perpetuate an anachronism which Congress attempted to remove. In sentencing for conspiracy as for the substantive offenses defined in Section 11, of course, the courts are expected to take into account the character of the particular offense committed, as did the trial court in the present case. Inflexibly harsh sentences need not result from the scale of punishments provided.

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[4] Statutes punishing conspiracies to commit specific offenses involving the use of force or violence provide for the following punishments: ten years' imprisonment or a $10,000 fine or both for conspiracy to interfere by violence with trade or commerce and for conspiracy to cast away a vessel (Act of June 18, 1934, c. 569, Sec. 2, 48 Stat. 979, 18 U. S. C. Sec. 420a; Act of Mar. 4, 1909, c. 321, Sec. 296 (R. S. Sec. 5364), 35 Stat. 1146, 18 U. S. C. Sec. 487); six years' imprisonment or a fine of $5,000 or both for conspiracies to intimidate witnesses, etc., and to prevent an officer of the Government from performing his duties (Act of Mar. 4, 1909, c. 321, Sec. 136 (R. S. Sec. 5406), 35 Stat. 1113, 18 U. S. C. Sec. 242; *id.*, Sec. 21 (R. S. Sec. 5518), 35 Stat. 1092, 18 U. S. C. Sec. 54); and three years' imprisonment or a $5,000 fine or both for conspiracy to injure the property of a foreign government (Act of June 15, 1917, c. 30, tit. VIII, Sec. 5, 40 Stat. 226, 22 U. S. C. Sec. 234).

In addition to the foregoing, legislation defining a particular type of conspiracy uniformly prescribes the same punishment for it as that specified for the corresponding substantive offense, if such an offense exists. Of the statutes enumerated above, including those in the footnote relating to conspiracies to engage in force or violence, eight prescribe such identity of punishment. These are the acts punishing conspiracies against the Farm Credit Administration and the Tennessee Valley Authority, the several conspiracies in restraint of trade or to interfere with trade, conspiracy to make false statements concerning claims for veterans' benefits, conspiracy to cast away a vessel, and conspiracy to violate the National Stolen Property Act. In prescribing equality of punishment for conspiracies and for the substantive offenses defined therefor, Section 11 of the Selective Training and Service Act is in accord with genral legislative policy. It would defeat that policy to leave non-violent conspiracies in violation of the Act punishable only under Section 37 of the Criminal Code.

(D) The tendency also is strong in conspiracy legislation enacted by the Congress, to return to the common law doctrine that an overt act is not essential to the offense. Cf. *Nash* v. *United States*, 229 U. S. 373, 378; see also opinion of the

court below, R. 146. Of the statutes just reviewed, only the National Stolen Property Act and the act punishing conspiracies to injure the property of a foreign government include an overt act in the definition of the offense. In addition, Section 37 of the Criminal Code and Section 4 of the Espionage Act which deals in part with offenses closely akin to treason, require an overt act. All of the other existing conspiracy statutes, including Title I of the Alien Registration Act adopted just two months before the Selective Training and Service Act and dealing as regards conspiracy with somewhat similar problems, omit this requirement. There is every reason to conclude, therefore, that Congress in enacting the conspiracy clause of Section 11 designedly omitted the requirement of an overt act and that the elimination of this requirement with respect to conspiracies not contemplating violence was intended. As previously pointed out (*supra*, pp. 22–24), the contrary view, restricting the clause to conspiracies involving force or violence, deprives it of significance; for with respect to the omission of the requirement of an overt act, as with regard to the provision for punishment, Section 6 of the Criminal Code already prescribed the same pattern.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgments of conviction should be affirmed.

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NOVEMBER, 1944

APPENDIX

Section 5 of the Selective Draft Act of May 18, 1917, 40 Stat. 76, as amended August 31, 1918, 40 Stat. 955 (50 U. S. C. App., Sec. 205) in pertinent part reads as follows:

> * * * and any person who shall willfully fail or refuse to present himself for registration or to submit thereto as herein provided shall be guilty of a misdemeanor and shall, upon conviction in a district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year and shall thereupon be duly registered.

Section 6 of the Selective Draft Act of 1917, so far as pertinent, provides as follows:

> Any person charged as herein provided with the duty of carrying into effect any of the provisions of this Act or the regulations made or directions given thereunder who shall fail or neglect to perform such duty; and any person charged with such duty or having and exercising any authority under said Act, regulations, or directions, who shall knowingly make or be a party to the making of any false or incorrect registration, physical examination, exemption, enlistment, enrollment, or muster; and any person who shall make or be a party to the making of any false statement or certificate as to the fitness or liability of himself or any other person for service under the provisions of this Act, or regulations made by

> the President thereunder, or otherwise evades or aids another to evade the requirements of this Act or of said regulations, or who, in any manner, shall fail or neglect fully to perform any duty required of him in the execution of this Act, shall, if not subject to military law, be guilty of a misdemeanor, and upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, or, if subject to military law, shall be tried by court-martial and suffer such punishment as a court-martial may direct.

Section 3 of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 217, 219, 41 Stat. 1359 (50 U. S. C. 33), provides as follows:

> Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service of the United States, shall be punished by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both.

Section 4 of the Espionage Act provides as follows:

> If two or more persons conspire to violate the provisions of sections two or three

of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this title shall be punished as provided by section thirty-seven of the Act to codify, revise, and amend the penal laws of the United States approved March fourth, nineteen hundred and nine.

Section 6 of the Criminal Code (R. S. § 5336, Mar. 4, 1909, c. 321, § 6, 35 Stat. 1089, 18 U. S. C. 6) provides as follows:

> If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than $5,000 or imprisoned not more than six years, or both.

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES.

No. 30.—October Term, 1944.

Willard Irwin Singer and Martin H. Singer, Petitioners, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[January 2, 1945.]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioners are father and son. They and one Walter Weel were indicted in one count charging a conspiracy to aid Willard I. Singer in evading service in the armed forces. No overt act was alleged. A demurrer to the indictment was overruled which claimed that an overt act was necessary. Petitioners were tried before a jury, found guilty and sentenced. Petitioner Willard I. Singer received a sentence of one year and a day; petitioner Martin H. Singer received a suspended sentence and was placed on probation for two years. Motions in arrest of judgment and for a new trial were denied. 49 F. Supp. 912. The judgments of conviction were affirmed by the Circuit Court of Appeals. 141 F. 2d 262. The case is here on a petition for a writ of certiorari which we granted, limited to the question whether the conspiracy charged constitutes an offense under § 11 of the Selective Training and Service Act of 1940, 54 Stat. 885, 894-895, 50 U. S. C. App. § 311.

The relevant part of § 11 reads as follows:

"Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this

Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, *or conspire to do so,* shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * * *." (Italics added.)

The section does not require an overt act for the offense of conspiracy. It punishes conspiracy "on the common law footing." *Nash* v. *United States,* 229 U. S. 373, 378. Hence the indictment is sufficient if the words "or conspire to do so" extend to all conspiracies to commit offenses against the Act. It is insufficient if the conspiracy clause is limited to conspiracies to "hinder or interfere in any way by force or violence" with the administration of the Act. If it is so limited then it would have been necessary to sustain the indictment under § 37 of the Criminal Code, 18 U. S. C. § 88, which requires the commission of an overt act.[1] See *United States* v. *Rabinowich,* 238 U. S. 78, 86.

Though the matter is not free from doubt, we think the conspiracy clause of § 11 is not limited but embraces all conspiracies to violate the Act. That is the view of the Court of Appeals for the Second Circuit (*United States* v. *O'Connell,* 126 F. 2d 807) as well as the court below. We think that construction is grammatically permissible and conforms with the legislative scheme.

Seven offenses precede the conspiracy clause. Each is set off by a comma. A comma also precedes the conspiracy clause and separates it from the force and violence provision just as the latter is separated by a comma from the clause which precedes it. The

[1] That section provides:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both."

punctuation of the sentence indicates that the disjunctive conspiracy clause is the last independent clause of a series not a part of the preceding clause. A subject of "conspire" must be supplied however the conspiracy clause is read. It is true that the subject must be plural and that the subject of each of the preceding clauses is singular except "any person or persons" in the force and violence clause. But it does not follow that the conspiracy clause is hitched solely to the preceding clause. When read as applicable to all the substantive offenses, the verb "conspire" is proper since some of the subjects would be singular and some plural.

A question remains concerning the word "so". The structure of the sentence as a whole suggests that the reference is to all the offenses previously enumerated. The seven offenses which precede the conspiracy clause are substantive offenses. Each carries the same penalty and is punishable in the same manner. The conspiracy clause comes last and is separated from the preceding one by a comma. If the word "so" is read restrictively, then one type of conspiracy is set apart for special treatment. If our construction is taken, a rational scheme results with the same maximum penalties throughout—all types of conspiracies being treated equally, just as the substantive offenses are treated alike. No persuasive reason has been advanced why the words "conspire to do so" should not carry their natural significance. The principle of strict construction of criminal statutes does not mean that they must be given their narrowest possible meaning. *United States* v. *Giles*, 300 U. S. 41, 48.

The legislative history throws only a little light on this problem of the construction of § 11. What appears is a brief statement by Senator Sheppard, Chairman of the Senate Committee on Military Affairs, who explained the bill on the floor of the Senate. He stated that the section which later became § 11 of the present Act "contains the penalty provisions of the bill, which are substantially the same as those of the World War act. Experience with the World War provisions shows that they worked satisfactorily in providing the necessary protection." 86 Cong. Rec. 10095. The Selective Draft Act of 1917, 40 Stat. 76, 50 U. S. C. App. § 201 *et seq.*, contained no conspiracy provision. And the penalties prescribed for the substantive offenses were milder than those contained in the present Act.[2] Conspiracies to commit non-violent offenses were

[2] The 1917 Act punished various substantive offenses of the kind covered by § 11 of the present Act by imprisonment for not more than one year. See §§ 5 and 6.

prosecuted under § 37 of the Criminal Code which, as we have noted, requires an overt act.[3] Conspiracies involving the use of force were prosecuted under § 6 of the Criminal Code, 35 Stat. 1089, 18 U. S. C. § 6, which punishes conspiracies "by force to prevent, hinder, or delay the execution of any law of the United States."[4] Sec. 37 of the Criminal Code provides a punishment of not more than two years' imprisonment or a fine of $10,000 or both. Sec. 6 of the Criminal Code provides a punishment of not more than six years' imprisonment or a $5000 fine, or both. Sec. 11 of the present Act provides imprisonment for not more than five years or a fine of $10,000 or both. Both § 37 and § 6 of the Criminal Code were in force when the present Act was adopted. The addition of the conspiracy clause of § 11 was a departure from the 1917 Act and a substantial departure at that. Moreover, the "World War provisions" which, according to Senator Sheppard, had provided "the necessary protection" were certainly not the provisions of the 1917 Act alone but the conspiracy statutes as well. Hence, we do not take his statement to mean that the penalty provisions of § 11 are substantially the same as those contained in the 1917 Act. We read his somewhat ambiguous comments as indicating that he was comparing the provisions of § 11 with the provisions of the 1917 Act plus the provisions of other statutes which were employed in enforcing that Act. Thus Senator Sheppard's statement suggests that § 11 was designed to catalogue the various offenses against the Act.[5] It suggests that the purpose of including a conspiracy clause in § 11 was to furnish a single basis for prosecuting all conspiracies to commit offenses against the Act. That results in punishments for some conspiracies being

[3] See United States *v.* McHugh, 253 Fed. 224; Anderson *v.* United States, 269 Fed. 65; O'Connell *v.* United States, 253 U. S. 142; Goldman *v.* United States, 245 U. S. 474.

[4] See Enfield *v.* United States, 261 Fed. 141; Reeder *v.* United States, 262 Fed. 36. But see Haywood *v.* United States, 268 Fed. 795.

Conspiracies were also prosecuted under § 4 of the Espionage Act of June 15, 1917, 40 Stat. 217, 219, 41 Stat. 1359, 50 U. S. C. § 33, which like § 37 of the Criminal Code requires an overt act. See Frohwerk *v.* United States, 249 U. S. 204; Pierce *v.* United States, 252 U. S. 239. But that section is applicable only in time of war and hence was not operative when the present Act became the law on September 16, 1940.

[5] Whether, as assumed in United States *v.* Offutt, 127 F. 2d 336, there may be conspiracies to violate § 11 which can still be prosecuted under § 37 of the Criminal Code is a question we do not reach.

If only one of the statutes is applicable to a conspiracy to violate § 11, the latter under which petitioners were convicted is controlling, as it is a later statute prescribing precise penalties for specified offenses. Callahan *v.* United States, 285 U. S. 515, 518.

increased. But there was likewise an increase in the penalties for substantive offenses. Yet under our interpretation the sanctions provided by § 11 are substantially the same as the sum of the various sanctions provided for the enforcement of the 1917 Act.

The United States suggests that if the conspiracy clause of § 11 is construed so as to apply only to conspiracies to obstruct the Act by force and violence it would merely duplicate § 6 of the Criminal Code and have no effect except to decrease the maximum imprisonment for the offense from six years to five. It is said in reply, however, that under the earlier Act it was uncertain whether conspiracies contemplating the use of force in interfering with its administration could be prosecuted under § 6 of the Criminal Code. Cf. *Reeder* v. *United States*, 262 Fed. 36, with *Haywood* v. *United States*, 268 Fed. 795, 799. And it is argued from that fact that the conspiracy clause of § 11 was added to dispel the uncertainty. That is left to conjecture. Though we assume that it was a reason for adding a conspiracy clause to § 11, we cannot conclude that the conspiracy clause which was fashioned is so limited. And where another interpretation is wholly permissible, we would be reluctant to give a statute that construction which makes it wholly redundant. Only a clear legislative purpose should lead to that result here.

Nor do we find force in the suggestion that the conspiracy clause was added merely to fill in gaps left by § 6 of the Criminal Code which covers only conspiracies to obstruct by force "the execution of any law of the United States." It is said that *United States* v. *Eaton*, 144 U. S. 677, established as a principle of federal criminal law that a provision which only punishes violations of a "law" does not cover violations of rules or regulations made in conformity with that law. It is therefore argued that § 6 of the Criminal Code does not embrace violations of rules or regulations and that § 11 filled that gap by adding "rules or regulations" to the force and violence clause. Here again the legislative history leaves that question wholly to conjecture. *United States* v. *Eaton* turned on its special facts, as *United States* v. *Grimaud*, 220 U. S. 506, 518-519, emphasizes. It has not been construed to state a fixed principle that a regulation can never be a "law" for purposes of criminal prosecutions. It may or may not be, depending on the structure of the particular statute. The *Eaton* case involved a statute which levied a tax on oleomargarine and regulated in detail oleomargarine manufacturers. Sec. 5 of the statute

provided for the keeping of such books and records as the Secretary of the Treasury might require. But it provided no penalty for non-compliance. Other sections, however, laid down other requirements for manufacturers and prescribed penalties for violations. Sec. 20 gave the Secretary the power to make "all needful regulations" for enforcing the Act. A regulation was promulgated under § 20 requiring wholesalers to keep a prescribed record. The prosecution was for non-compliance with that regulation. Sec. 18 imposed criminal penalties for failure to do any of the things "required by law". The Court held that the violation of the regulation promulgated under § 20 was not an offense. It reasoned that since Congress had prescribed penalties for certain acts but not for the failure to keep books the omission could not be supplied by regulation. And Congress had not added criminal sanctions to the rules promulgated under § 20 of that Act. The situation here is quite different. Sec. 11 of the present Act makes it a crime to do specified acts, either by way of omission or commission, in violation of the Act or the rules or regulations issued under it. Thus it is a felony for a person to "fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act." Sec. 11 is therefore a law of the United States which imposes criminal sanctions for disobedience of the selective service regulations. Since Congress has made the violation of regulations a felony, it can hardly be contended that those regulations are not a "law" for the purposes of § 6 of the Criminal Code. But though we assume that *United States* v. *Eaton* was a reason for adding a conspiracy clause to § 11, we cannot assume that the one which was added had the narrow scope suggested. Whatever the reason, words mean what they say. And if we give the words "conspire to do so" their natural meaning, we do not make the Act a trap for the innocent.

We have been advised that Martin H. Singer died on October 1, 1944. The writ is accordingly dismissed as to him (*Menken* v. *Atlanta*, 131 U. S. 405; *United States* v. *Johnson*, 319 U. S. 503, 520) and the cause is remanded to the District Court for such disposition as law and justice require. *United States* v. *Pomeroy*, 152 Fed. 279, rev'd 164 Fed. 324; *United States* v. *Dunne*, 173 Fed. 254.

The judgment as respects Willard I. Singer is

Affirmed.

SUPREME COURT OF THE UNITED STATES.

No. 30.—October Term, 1944.

Willard Irwin Singer and Martin H. Singer, Petitioners, *vs.* United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[January 2, 1945.]

Mr. Justice Frankfurter, dissenting.

In the past, to soften the undue rigors of the criminal law, courts frequently employed canons of artificial construction to restrict the transparent scope of criminal statutes. I am no friend of such artificially restrictive interpretations. Criminal statutes should be given the meaning that their language most obviously invites unless authoritative legislative history or absurd consequences preclude such natural meaning. There are surely deep considerations of policy why the scope of criminal condemnation should not be extended by a strained reading. The natural reading of the conspiracy provision of § 11 of the Selective Service Act of 1940[1] confines its application to the immediately preceding clause which

[1] 54 Stat. 885, 894, 50 U. S. C. App. § 311. "Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . ."

punishes "any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto." Since no absurd consequences preclude the indicated natural reading of this criminal statute and since all available extraneous aids confirm the rendering which the text invites, I think it should be given it.

It is difficult for me to believe that if one were reading § 11 without consciousness of the problem now before us and merely as a matter of English one would make the "so" in the phrase "conspire to do so" relate back to all that is contained in the twenty-two preceding lines rather than to the "force or violence" clause immediately preceding. The structure of the sentence, grammar, and clarity of expression combine to attribute to the phrase "to do so" a limited reference instead of making "so" carry the burden of the whole paragraph as antecedent. Good sense reinforces these textual considerations. It is made an offense to conspire to violate not only the seven substantive offenses enumerated by Congress but also the multitudinous "rules and regulations". There is an obvious difference between conspiracies to violate by force and violence any rule issued under the Act and a mere unexecuted arrangement between two people peacefully to escape one of such rules.

All extraneous aids confirm rather than contradict this construction.

The only authoritative legislative commentary we have on § 11 is the statement by Senator Sheppard, Chairman of the Committee on Military Affairs, in a formal speech expounding the various provisions of the Act. There is every reason to believe that Senator Sheppard's speech had behind it the authority of those who framed this legislation and who were cognizant of the prior legislation upon which they were building. Senator Sheppard stated that § 11 "contains the penalty provisions of the bill, which are substantially the same as those of the World War act. Experience with the World War provisions shows that they worked satisfactorily in providing the necessary protection." 86 Cong. Rec. 10095. It is to be noted that Senator Sheppard spoke of the "World War provisions" and thereby evidently had in mind the various enactments available for dealing with interferences with the raising of an army.

In its arsenal of punishment the Government had provisions dealing specifically with conspiracies affecting the recruiting of

an army as well as the all-comprehending conspiracy statute outlawing conspiracies to commit any offense against the United States —an old enactment known to every tyro of federal law since Reconstruction days (R. S. § 5440, Act of March 2, 1867). What then were the specific conspiracy provisions which were "substantially" drawn upon for this war from the legislation of the First World War? (a) Section 6 of the Criminal Code, 18 U. S. C. § 6, punished conspiracies "by force to prevent, hinder, or delay the execution of any law of the United States . . ." with a fine of $5,000 or imprisonment for six years or both. No overt act was required for prosecution for this conspiracy. (b) Section 4 of the Espionage Act, 40 Stat. 217, 219, 50 U. S. C. § 34, outlawed conspiracies to violate §§ 2 and 3 of the Espionage Act, to be punished by a fine of $10,000, imprisonment for twenty years or both. Section 4 required an overt act. This section survived the last war but was not, however, operative when the Selective Service Act was enacted because it applies only "when the United States is at war."

If the conspiracy clause in § 11 is confined to offenses involving force or violence, the provisions as to conspiracy remain substantially the same under the 1940 Act as they were during the last war. Conspiracies to commit non-violent offenses—that is, conspiracies to commit the range of substantive offenses, some of them rather minor in character, contained in § 11—are of course still punishable under the general conspiracy provision, to wit § 37 of the Criminal Code, as was the situation during the last war. Offenses of violence which fell within § 6 of the Criminal Code in 1917 are now included within § 11, neither of which requires an overt act. The punishment for these conspiracies of violence is substantially similar—a $5,000 fine and six years imprisonment under § 6 and a $10,000 fine and five years imprisonment under § 11. Senator Sheppard's desire for penalties "which are substantially the same as . . . the World War provisions" would thus appear to be accomplished.

But the Government urges that if § 11 of the 1940 Act merely hits a conspiracy to do an act of violence, the conspiracy clause will be redundant in that it will accomplish nothing except to increase the limit of the fine from $5,000 to $10,000 and to decrease the allowable imprisonment from six years to five years. This argument wholly overlooks two important changes effected by the conspiracy provision of the 1940 Act. The cases had raised doubt whether § 6 of the Criminal Code was properly applicable

to conspiracies to violate by force the Draft Act. Compare *Reeder* v. *United States*, 226 Fed. 36, cert. denied, 252 U. S. 581, with *Haywood* v. *United States*, 268 Fed. 795, 799, cert. denied, 256 U. S. 689. By specific inclusion of a conspiracy provision in the Selective Service Act, instead of leaving it to the generality of § 6 of the Criminal Code, the doubt was completely eliminated. That in itself saves the conspiracy provision from mere redundancy, for it gives it, as a matter of law enforcement, an important function.

The Government also fails to take into account that the conspiracy provision of § 11 added considerably to the scope of § 6—that the net of § 11 would catch many offenders left free by § 6 of the Criminal Code. The latter merely reaches conspiracies to obstruct by force the operation of "any law of the United States". For more than half a century, ever since *United States* v. *Eaton*, 144 U. S. 677, it has been the settled principle of federal criminal law that a provision merely punishing violation of a "law" does not cover violations of rules or regulations made in conformity with that law. See *United States* v. *Grimaud*, 220 U. S. 506, 518-519. Section 6, therefore, does not cover violations of rules or regulations. Section 11 of the 1940 Act made an important addition in that it punishes conspiracies to interfere forcibly not merely "with the administration of this Act" but also with "the rules or regulations made pursuant thereto".

United States v. *Eaton* is not a judicial sport. It is the application of a principle which has been undeviatingly applied by this Court—most recently in *Viereck* v. *United States*, 318 U. S. 236, 241—and upon the basis of which Congress legislates. *In re Kollock*, 165 U. S. 526; *United States* v. *Grimaud, supra*; *United States* v. *George*, 228 U. S. 14. The principle is that a crime is defined by Congress, not by an executive agency. See *United States* v. *Smull*, 236 U. S. 405, 409. "Where the charge is of crime, it must have clear legislative basis." *United States* v. *George, supra* at 22. It is only when Congress in advance prescribes criminal sanctions for violations of authorized rules that violations of such rules can be punished as crimes. It is this far-reaching distinction which, it was pointed out in the *Grimaud* case, put on one side the doctrine of the *Eaton* case, where violation of rules and regulations was not made criminal, and on the other side legislation such as that enforced in the *Grimaud* case where Congress specifically provided that "*any violation of the provisions of this act or such rules and regulations* [of the Secretary of Agriculture] *shall be*

punished." (Italics added by Mr. Justice Lamar.) *United States v. Grimaud, supra,* at 515. Congress consciously gave an effect to the conspiracy clause of § 11 which is absent from that of § 6 of the Criminal Code.

There is another strong ground for concluding that the draftsmen of the Selective Service Act did not intend by its dubious language to extend the conspiracy provision beyond violent attempts and to sweep into this clause all conspiracies to violate the Act or any of its regulations. Whenever Congress desires to make a conspiracy provision apply to a whole series of substantive offenses, it does so explicitly. Either the conspiracy provision is set off in a separate section or subsection made applicable to all preceding sections, or else clear words of reference to "any provision" or "any of the acts made unlawful" are employed. See National Stolen Property Act, § 7, 53 Stat. 1178, 1179, 18 U. S. C. § 418a; Farm Credit Act, § 64(f), 48 Stat. 257, 269, 12 U. S. C. § 1138(f); Sherman Act, §§ 1-3, 26 Stat. 209, as amended, 15 U. S. C. §§ 1-3; Act of July 31, 1861, R. S. § 1980, 8 U. S. C. § 47. The absence of such explicitness in the Selective Service Act is a strong indication that no such sweeping scope was intended.

A statute defining specific crimes presents to courts a very different duty of construction than do regulatory enactments wherein Congress recites a broad policy in light of which the specific provisions of the regulatory scheme must be construed. In the latter situation, a particular provision of a statute derives meaning from the broad policy expressed. See *Phelps Dodge Corp.* v. *Labor Board,* 313 U. S. 177, 194. In a criminal statute like the one now under review language defining the crime is self-contained—there is no background of broad policy to guide the duty of giving such language its easy, most natural meaning.

In the past, decisions undoubtedly worked hard to narrow the scope of a criminal statute. It is against the whole tenor of reading a criminal statute to work hard to give it the broadest possible scope. The responsibility of Congress for manifesting its will is ill served by easy-going judicial construction of criminal statutes.

These views call for reversal of the judgment.

Mr. Justice ROBERTS, Mr. Justice MURPHY and Mr. Justice RUTLEDGE join in this dissent.